

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for Penalty Relief
by:**

Hung-Chuan Cheng, M.D.

**Physician's and Surgeon's
Certificate No. A 82948**

Petitioner.

Case No. 800-2020-072952

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 23, 2023.

IT IS SO ORDERED January 24, 2023.

MEDICAL BOARD OF CALIFORNIA



**Laurie Rose Lubiano, J.D., Chair
Panel A**

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA**

In the Matter of the Petition for Penalty Relief of:

HUNG-CHUAN CHENG, M.D., Petitioner.

Physician's and Surgeon's Certificate No. A82948

Agency Case No. 800-2020-072952

OAH No. 2022050772

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 14, 2022.

Fredrick M. Ray, Esq., Ray & Bishop PLC, represented Hung-Chuan Cheng, M.D. (Petitioner) who was present during the hearing.

Pursuant to the provisions of Government Code section 11152, Colleen M. McGurrin, Deputy Attorney General, represented the Attorney General of the State of California.

The ALJ received testimony and documentary evidence. The record closed and the matter was submitted for decision on September 14, 2022. On her own motion, the

ALJ redacted Petitioner's personal identifying information from Exhibits 1, 8, and 9 to safeguard Petitioner's privacy.

SUMMARY

Petitioner requests the early termination of his five-year license probation. Petitioner established by clear and convincing evidence he has complied with the terms and conditions of probation and has made significant and long-standing changes to his medical practice so that further monitoring is unnecessary to protect the public. Accordingly, Petitioner's request is granted.

FACTUAL FINDINGS

Background

1. On May 2, 2003, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A 82948 (license) to Petitioner. The license is scheduled to expire on October 31, 2022. Petitioner is a family practice physician.

2. In a Decision and Order effective November 9, 2018 (Probation Order), the Board adopted a Stipulation and Settlement Agreement (Stipulation) in which Petitioner agreed to a stayed revocation of his license and probation for five years on specified terms and conditions. The terms and conditions included a partial restriction of the prescription, dispensation, administration, and possession of all controlled substances except those listed on Schedule V until Petitioner completed a prescribing practices course; maintenance of records of all controlled substances ordered or

prescribed by Petitioner; completion of additional education courses including courses on prescribing practices, medical record keeping, and ethics; submission of quarterly reports to the Board, and monitoring of Petitioner's practice by a Board-approved monitor.

3. The Stipulation and Probation Order were based on the Accusation filed against Petitioner on December 4, 2017, in case number 800-2014-010394. As part of the Stipulation, Petitioner agreed the charges and allegations in the Accusation, if proven at a hearing, would constitute cause for imposing discipline upon his license. Petitioner also agreed if he petitioned for early termination of his probation, the charges and allegations contained in the Accusation would be deemed true, correct, and fully admitted for purposes of the proceeding. Thus, the factual allegations and charges contained in the Accusation summarized below are considered true for this proceeding.

The Accusation

4. The Accusation focused on two areas of misconduct by Petitioner. The first involved his prescribing and dispensing drugs without appropriate examination or medical indication. Specifically, in February and March 2016, Petitioner sold and dispensed Obagi Skin Lightening Serum with Vitamin C 10% hydroquinone USP, 4% without a prescription to two patients via the internet, even though hydroquinone USP, 4% requires a prescription. Petitioner sold the serum without examining the two patients who purchased the serum or determining their need for the serum. Petitioner did not obtain the patients' medical history or form a doctor-patient relationship with them before dispensing the serum. Petitioner also did not maintain medical records for these patients. Petitioner's misconduct constituted gross negligence and repeated acts of negligence, was unprofessional, reflected inaccurate and inadequate record

keeping, and violated statutes prohibiting the dispensing of dangerous drugs without appropriate examination and medical indication and the dispensing of dangerous drugs or devices on the internet.

5. The second area of misconduct involved Petitioner's prescribing of pain medication to three patients between 2014 and 2017. Petitioner prescribed pain medication to each of the patients without obtaining a detailed history or performing a physical exam. Petitioner failed to obtain the patients' prior medical records and did not check the C.U.R.E.S. (Controlled Substance Utilization Review and Evaluation System) website to determine whether the patients had obtained controlled substances from other medical providers. Petitioner also failed to require the patients to undergo urine toxicology screens. Petitioner's prescription of pain medication was excessive, and he continued to prescribe pain medication to one patient even though she had an inappropriate urine toxicology screen. With two of the three patients, Petitioner did not enter into a pain management contract, and Petitioner also failed to document any efforts to reduce the patient's pain medication. Petitioner did not enter the narcotic prescriptions in the patients' charts. Additionally, Petitioner's handwritten records for the three patients were inadequate and illegible. Petitioner's misconduct constituted gross negligence and repeated acts of negligence, reflected excessive prescribing and inadequate and inaccurate record keeping, and was unprofessional.

Petition for Penalty Relief and Rehabilitation Evidence

6. On November 10, 2020, Petitioner signed and subsequently filed his Petition for Penalty Relief seeking early termination of his probation (Petition). Petitioner's probation is currently set to expire on November 9, 2023.

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7. Petitioner graduated from medical school at the Medical College of Virginia School of Medicine in 2001 and was in residency in family practice from 2001 through 2004 at Riverside County Regional Medical Center. He is a solo practitioner and sees approximately 20 patients a day. He provides medical services to indigent patients through the CalOptima program. He is married and is the sole financial provider for his wife and two minor children.

COMPLIANCE WITH PROBATION TERMS

8. Petitioner has complied with all terms and conditions of his probation. He has timely submitted all but two of his quarterly reports; the two late reports were submitted no later than four days past the deadline. He has maintained and submitted controlled substance logs without issue. Petitioner completed the Board-ordered courses on medical recordkeeping and prescribing six months before his probation commenced. He started the ethics course within the first 20 days of his probation and completed it in a year. He completed his education requirements through his 2021-2022 probation year and has partially satisfied his 2022-2023 requirements. Petitioner has also paid his probation monitoring costs through 2022. (Ex. A.)

CHARACTER REFERENCES

9. Ming Ying Chen, D.O., submitted a letter in support of Petitioner's petition and testified at the hearing as well. Dr. Chen is a family physician who obtained his osteopathic license in 2005. He has no history of discipline with the Osteopathic Board. Dr. Chen has known Petitioner for more than 30 years. Petitioner was Dr. Chen's supervising resident when Dr. Chen was a fourth-year medical student. Many members of Dr. Chen's family see Petitioner as their family doctor. Dr. Chen also treated several of Petitioner's patients after they transferred to Kaiser Permanente,

where Dr. Chen works. Dr. Chen sees Petitioner at least once a week, and they often discuss difficult cases during this time.

10. Dr. Chen reviewed Petitioner's disciplinary documents and discussed the issues with Petitioner. He never received or heard of any complaints from his family members or his patients about Petitioner's medical practice. In his interview with the Board, Dr. Chen stated Petitioner understands his mistakes, took the required courses, and made the necessary changes in his practice to meet the standard of care. Dr. Chen vouched for Petitioner's clinical skills. In his letter to the Board, Dr. Chen described Petitioner as "honest and caring" as well as an "excellent physician" who continues to stay current on his clinical knowledge. (Ex. 2, p. A8.)

11. Jeff C. Huang, M.D., also endorsed the granting of the Petition. Dr. Huang has been a licensed physician since 1996 with a specialty in family medicine. Dr. Huang has no history of discipline with the Board. He has known Petitioner professionally for over 10 years through their work at Fountain Valley Regional Hospital, and he sees Petitioner a couple of times per week. He occasionally covers for Petitioner when Petitioner is out of town, and Petitioner treats Dr. Huang's patients when Dr. Huang is away.

12. Dr. Huang was aware of Petitioner's discipline from discussions with Petitioner. Dr. Huang does not see any problems with Petitioner's practice, and he believes Petitioner's patients are happy with him. Dr. Huang noted those of his patients who Petitioner had also treated always complimented Petitioner on his professionalism and medical expertise. Dr. Huang believes Petitioner is a safe and honest physician. Dr. Huang wrote that he would not rely on Petitioner for coverage if he had doubts about Petitioner's competency. (Ex. 3, p. A10.) Dr. Huang also confirmed

Petitioner has incurred many expenses and financial hardships as a result of his probation.

PETITIONER'S TESTIMONY AND REHABILITATION EVIDENCE

13. During the administrative hearing on the Petition, Petitioner's testimony was heartfelt and professional. In his testimony and his written statement, Petitioner took responsibility for his actions and did not belittle them. He acknowledged that "he fell short of the necessary care and diligence" required to keep his patients safe. (Ex. 1, p. A5.) He also wrote that satisfying the conditions of his probation has made him a better doctor. (*Ibid.*)

14. Petitioner's actions demonstrate he has taken the Board's concerns seriously. Petitioner shut down his skincare website before the Accusation was filed, and he no longer sells medical products on the internet. Since the Accusation was filed, Petitioner has transitioned from handwritten records to electronic record keeping. He immediately enrolled in the required education courses and adopted the latest record keeping and prescribing practices he learned from his classes, including completing a medical history and physical examination, screening patients for risk factors, establishing a diagnosis and medical necessity, exploring therapeutic options, and reviewing C.U.R.E.S. reports. He no longer prescribes controlled substances for pain; if his patients need opiates or other narcotics, he refers them to a pain specialist. In those rare instances where he might treat pain with permitted medications, Petitioner would use a pain medication contract and take measures to guard against drug-seeking behaviors and drug abuse. On the few occasions where Petitioner has had to prescribe sleep or anxiety medication to his patients, he reviews the C.U.R.E.S. website before he does so.

15. Petitioner's practice monitor, Dr. Angela Huang, has reviewed 10 percent of his charts each month since the start of his probation. In her initial quarterly report, Dr. Huang noted Petitioner's motivation and receptivity to improving his practice. She has found no fault with Petitioner's clinical practice or record keeping since the second quarter of 2019. (Ex. 9, p. A401.) Her quarterly reports repeatedly note Petitioner is practicing within the standard of care. Her reports also state that Petitioner has referred most patients requiring narcotics for pain management to an outside specialist. She found the quality of Petitioner's documentation showed "consistency in patient care." (*Id.*, p. A291.)

16. Petitioner has not been cited for any additional violations since the Accusation. He believes the public can trust him to practice medicine without the oversight of probation.

17. Petitioner lost his affiliations with medical groups and several insurance plans as a consequence of his probation. Blue Shield of California, United Healthcare, Anthem Blue Cross, and TRICARE have each dropped him from their plans. According to Petitioner, the loss of insurance coverage has created a financial hardship for his patients and his practice. The lack of coverage has forced several of Petitioner's patients to leave his practice. Those who want to continue with Petitioner must now pay cash. And, Petitioner has provided free medical care for those who are unable to pay. Petitioner estimates the loss of coverage has affected 15 to 20 percent of his practice.

18. Petitioner also testified the loss of insurance and the costs of probation and the practice monitor have caused economic hardship to his family. Petitioner requests the Board to terminate his probation early so he can safeguard his credentials and privileges as well as restore his participation in his patients' insurance plans.

LEGAL CONCLUSIONS

1. Petitioner bears the burden of proving both his rehabilitation and his fitness to practice medicine. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v. State Bar of Cal.* (1952) 39 Cal.2d 541, 546-547.)

2. A person whose medical certificate has been placed on probation for five years may petition the Board for modification of penalty, including early termination of probation, after two years have elapsed. (Bus. & Prof. Code, § 2307, subd. (b)(3).) As Petitioner's probation was for five years and Petitioner filed the Petition more than two years after the effective date of the Probation Order, the Petition is timely.

3. Business and Professions Code section 2307, subdivision (e), states in pertinent part:

The panel of the board or the administrative law judge hearing the petition may consider all activities of the Petitioner since the disciplinary action was taken, the offense for which the Petitioner was disciplined, the Petitioner's activities during the time the certificate was in good standing, and the Petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . . .

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4. Petitioner has shown it would be consistent with the public interest to permit the early termination of his probation. (Factual Findings 1–18.) Petitioner’s discipline stemmed from his sale of skin cream on the internet without a prescription, his prescribing, charting, and care for patients needing pain medication, and his poor record keeping. Petitioner acknowledged his past practice did not comport with the standard of care, and he has made significant changes designed to protect his patients. In response to the Board’s concerns, Petitioner closed his internet site more than five years ago and he no longer prescribes pain medications to his patients. He refers those patients requiring narcotics to specialists. He now uses an electronic record keeping system that reflects the knowledge he gained from his prescribing and record keeping courses and comports with the standard of care. He has fulfilled all his probation requirements. His practice monitor has had no complaints about his clinical practice or charting for several years. Two doctors who are familiar with his practice support the early termination of his probation. His patients will also benefit if Petitioner can resume his insurance affiliations.

5. While mere compliance with probationary terms does not automatically provide the basis for early termination, Petitioner clearly and convincingly proved his rehabilitation and demonstrated he no longer requires the oversight of probation. The totality of the evidence demonstrates Petitioner will not pose a danger to the public if the Board terminates his probation one year early. Petitioner therefore sustained his burden of proof showing his entitlement to early termination of his probation.

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ORDER

The petition of Hung-Chuan Cheng, M.D., for early termination of probation is granted. Physician's and Surgeon's Certificate Number A 82948 is fully restored.

DATE: 10/12/2022

A handwritten signature in black ink, appearing to read 'Cindy F. Forman', with a stylized, cursive script.

CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings